

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID R. KIDWELL
Claimant

VS.

SHAWNEE COUNTY
Respondent
Self-Insured

)
)
)
)
)

Docket No. 201,769

ORDER

Respondent appeals from a January 4, 1996 preliminary hearing Order for Medical Treatment by Administrative Law Judge Floyd V. Palmer.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment. Respondent seeks review of that Order, contending that claimant has failed to meet his burden of proving accident or occupational disease arising out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review a finding regarding a disputed issue of whether the employee suffered accidental injury or occupational disease which arose out of and in the course of the employment. K.S.A. 44-534a.

In September of 1991, while employed by respondent, claimant reported to Dr. Jeffrey P. Rhoads certain symptoms including facial swelling, difficulty breathing, coughing, chronic diarrhea and blood in his urine. Claimant has since undergone an extended course of treatment with Dr. Rhoads and has been to the Mayo Clinic three times. On July 8, 1994, Dr. Rhoads took claimant off work indicating that claimant's breathing problems were aggravated by secondhand smoke exposure at the work place. He was subsequently released to return to work in a non-smoking environment, but this restriction was not accommodated by the respondent.

Dr. Rhoads does not state that claimant's exposure to the smoke-filled work environment at the Shawnee County Corrections Facility caused his condition, but does conclude that it caused an exacerbation of his symptoms. Respondent points to the fact that Dr. Rhoads cannot state whether the secondhand smoke caused a permanent worsening of the medical condition, nor can he state that it caused the underlying disease process to progress any more rapidly than it would have on its own. Respondent relies upon this to argue that the claimant has failed to meet his burden of proving his condition arose out of and in the course of his employment with respondent. The Appeals Board

disagrees. What is at issue here is the ordering of preliminary benefits, specifically medical treatment. It is sufficient for purposes of this review to find that claimant has shown that the secondhand smoke in the work environment aggravated his preexisting condition or intensified the affliction. See *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984); *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

The Appeals Board is not asked, nor would it have the jurisdiction to decide upon an appeal from a preliminary hearing order, whether the medical treatment ordered provided is for the temporary aggravation or the underlying condition. The Administrative Law Judge has the jurisdiction and authority to order medical benefits upon a showing that the aggravation of symptoms is work related. The Appeals Board finds that claimant has met his burden in this regard.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the January 4, 1996 Order for Medical Treatment by Administrative Law Judge Floyd V. Palmer should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Derek J. Shafer, Topeka, KS
 Larry G. Karns, Topeka, KS
 Floyd V. Palmer, Administrative Law Judge
 Philip S. Harness, Director